



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL, CNR

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's notice to end tenancy for unpaid rent or utilities pursuant to section 46.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order of possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to sections 26, 67 and 72; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlords' amended application increased the monetary claim for unpaid rent from \$760.00 for the month of February 2018 to include the months of March and April 2018 for a total monetary claim of \$3,480.00

The tenant testified that she served the landlords the notice of dispute resolution package by registered mail on February 17, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. Landlord J.J. confirmed receipt of the dispute resolution package but could not confirm the date of receipt. I find that the landlords were deemed served with this package on February 22, 5 days after its mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Both parties agreed that landlord J.J. served the dispute resolution package on the tenant in person on February 20, 2018. I find that the tenant was served with the dispute resolution package on February 20, 2018, in accordance with section 89 of the *Act*.

Both parties agreed that landlord J.J. served the dispute resolution amendment package on the tenant in person on March 5, 2018. I find that the tenant was served with the dispute resolution amendment package on March 5, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a monetary Order for unpaid rent pursuant to sections 26, 67 and 72 of the *Act*?
3. Are the landlords entitled to recover the filing fee pursuant to section 72 of the *Act*?
4. Is the tenant entitled to have the 10 Day Notice cancelled?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in August 2016 and is currently ongoing. Monthly rent in the amount of \$1,360.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

On February 1st, 2018, the tenant paid the landlords \$600.00 in partial satisfaction of February's rent. On February 17, 2018 landlord J.J. personally served a 10 Day Notice to End Tenancy (the "10 Day Notice") on the tenant effective February 26, 2018. The tenant did not make any further rent payments in February 2018. The tenant did not pay rent for March 2018. The tenant paid the landlords \$2,100.00 on April 15, 2018. The landlords issued the tenant a receipt for \$2,200.00 for use and occupancy only; the quantum on the receipt was in error, both parties agree that the tenant paid \$2,100.00 not \$2,200.00.

The tenant testified that she was unable to make the rent payments due to employment and family health difficulties.

Two days prior to the hearing the landlords submitted into evidence a new monetary worksheet requesting pre-payment of May 2018 rent.

Analysis

As both parties testified that Landlord J.J. personally served the 10 Day Notice on the tenant on February 17, 2018, I find that the tenant was served with the 10 Day Notice on February 17, 2018 in accordance with sections 88 and 90 of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. This section applies even if the tenant is having financial difficulties or family health issues. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,360.00 on the first day of each month from February to April 2018 which she failed to do.

Pursuant to the 10 Day Notice, this tenancy was scheduled to end on the corrected effective date of February 27, 2018; however, the tenant filed to dispute the 10 Day Notice within the allowed time frame under section 46 of the *Act*. Upon reviewing the tenant's application and hearing the testamentary evidence of both parties, I find that the tenant's application to dispute the 10 Day Notice is without merit. The tenant admitted to failing to pay the rent in full when it was due between February and April 2018 contrary to section 26(1) of the *Act*. I find that the tenant owes the landlords \$1,380.00 in back rent from February to April 2018.

Section 3.14 of the Residential Tenancy Rules of Procedure state that documentary evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. As the monetary worksheet was submitted by the landlords just two days prior to the hearing I decline to consider or accept this evidence. Further, I find that the landlord's application for monetary compensation for the month of May 2018 is premature as it is still April 2018.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenant's entire security deposit in the amount of \$600.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

Pursuant to section 55 of the *Act* I find that the landlords are entitled to an Order of Possession for unpaid rent owing from February 2018 to April 2018.

Conclusion

I dismiss the tenant's application without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 and 72 of the *Act*, I issue a monetary Order under the following terms, which allows the landlords to recover damages for unpaid rent and the filing fee for this application:

Item	Amount
February 2018 Rent	\$760.00
March 2018 Rent	\$1,360.00

April 2018 Rent	\$1,360.00
Less April 15, 2018 payment	-\$2,100.00
Less security deposit	-\$600.00
Filing Fee	\$100.00
Total	\$880.00

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 30, 2018

Residential Tenancy Branch